

**PART 293—NATIONAL IMAGERY
MAPPING AGENCY (NIMA) FREE-
DOM OF INFORMATION ACT
PROGRAM**

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§ 293.1 Purpose.

This part implements the Freedom of Information Act (FOIA) and 32 CFR part 286 to establish a uniform process in responding to FOIA requests received by the National Imagery Mapping Agency (NIMA).

§ 293.2 Policy.

It is NIMA policy that:

(a) Agency records that, if disclosed, would cause no foreseeable harm to an interest protected by a FOIA exemption, will be made readily accessible to the public.

(b) NIMA organizations will ensure that internal procedural matters do not unnecessarily impede a FOIA requester from promptly obtaining NIMA records.

§ 293.3 Applicability and scope.

This part applies to all NIMA organizations and is intended as a brief overview of the FOIA process within NIMA. To obtain complete guidance, this instruction must be used in conjunction with 32 CFR part 286. Additional assistance is also available from the Office of General Counsel (GC).

§ 293.4 Definitions.

Agency records.

(1) A product of data compilation (such as all books, papers, maps, photographs, and machine-readable materials including those in electronic form or format) or other documentary materials (such as letters, memos, or notes) regardless of physical form or characteristics that is made or received by NIMA in connection with the trans-

action of public business, and is in NIMA's possession and control at the time the FOIA request is made.

(2) The following are not considered Agency records:

(i) Objects or articles, such as structures, furniture, vehicles, and equipment.

(ii) Anything that is not a tangible or documentary record, such as an individual's memory or oral communication.

(iii) Personal records of an individual not subject to agency creation or retention requirements, that have been created and maintained primarily for the convenience of the Agency employee, and that are not distributed to other Agency employees for their official use. Personal records fall into three categories: those created before entering Government service; private materials brought into, created, or received in the Office that were not created or received in the course of transacting Government business; and work-related personal papers that are not used in the transaction of Government business.

(3) Agency records available to the public through an established public distribution system, the FEDERAL REGISTER, the National Technical Information Service (NTIS), or the Internet normally need not be processed as FOIA requests, unless the requester insists that the request be processed under the FOIA.

(4) To be subject to the FOIA, the Agency record being requested must actually exist and be in the possession and control of the Agency at the time a FOIA request is made. There is no obligation to create, compile, or obtain a record to satisfy a FOIA request.

Appellate authority (AA). An agency employee who has been granted authority to review the decision of the initial denial authority (IDA) (see IDA definition) that has been appealed by a FOIA requester and make the appeal determination for the Agency on the releasability of the records in question.

FOIA exemption. Agency records, which if disclosed, would cause a foreseeable harm to an interest protected by a FOIA exemption, may be withheld from public release. There are nine exemptions that permit an agency to

withhold records requested under a FOIA request. The exemptions are for records that apply to:

(1) Information that is currently and properly classified pursuant to an Executive Order in the interest of national defense or foreign policy.

(2) Information that pertains solely to the internal rules and practices of the Agency. This exemption has two profiles, high and low. The high profile permits withholding of a document that, if released, would allow circumvention of an Agency rule, policy, or statute, thereby impeding the Agency in the conduct of its mission. The low profile permits withholding of the record if there is no public interest in the record, and it would be an administrative burden to process the request. Activities should not rely on the low profile exemption because the Department of Justice may not defend its use.

(3) Information specifically exempted from disclosure by a statute that establishes particular criteria for withholding the record. The language of the statute must clearly state that the information will not be disclosed.

(4) Information such as trade secrets and commercial or financial information obtained from a company on a privileged or confidential basis that, if released, would result in competitive harm to the company.

(5) Inter- and intra-agency memoranda that are deliberative in nature. This exemption is appropriate for internal documents that are part of the decision-making process, and contain subjective evaluations, opinions, and recommendations. A document must be both deliberative and part of a decision-making process to qualify for this exemption.

(6) Information from personnel and medical files that would result in a clearly unwarranted invasion of personal privacy if disclosed or released.

(7) Records or information compiled for law enforcement purposes that:

(i) Could reasonably be expected to interfere with law enforcement proceedings.

(ii) Would deprive a person of a right to a fair trial or impartial adjudication.

(iii) Could reasonably be expected to constitute an unwarranted invasion of the personal privacy of others.

(iv) Would disclose the identity of a confidential source; would disclose investigative techniques and procedures; and

(v) Could reasonably be expected to endanger the life or physical safety of any individual.

(8) The examination, operation, or condition reports prepared by, on behalf of, or for the use of any Agency responsible for the regulation or supervision of financial institutions.

(9) Geological and geophysical information and data (including maps) concerning wells.

FOIA request.

(1) An FOIA request is a request, in writing, for agency records. The request can either implicitly cite FOIA, but must reasonably describe the record being requested. In addition, the request must include language indicating the requester's willingness to pay fees associated with processing the FOIA request.

(2) Any person, including a member of the public (U.S. or foreign citizen or entity), an organization, or a business can make FOIA requests. Requests from officials of State or local Governments for NIMA records are considered the same as requests from any other requester. Requests from members of Congress not seeking records on behalf of a congressional committee or subcommittee, and requests from either House sitting as a whole or made on behalf of constituents are considered the same as requests from any other requester. Requests from foreign governments that do not invoke the FOA are referred to appropriate foreign disclosure channels and the requester is so notified by GC.

Initial denial authority (IDA). An agency employee who has been granted authority to make an initial determination for the Agency that records requested in a FOIA request should be withheld from disclosure or release.

Mandatory declassification officer (MDO). A senior agency official has been granted authority to perform mandatory declassification reviews for NIMA.

§ 293.5

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Multi-track processing. A system in which pending FOIA requests that cannot be processed within the statutory time limit of 20 working days are separated into distinct working tracks. The tracks are based on the date the FOIA request is received by GC, the amount of work and time involved in processing the request, and whether the request qualifies for expedited processing.

NIMA operational file exemption. 10 U.S.C. 457 provides that NIMA may withhold from public disclosure operational files that:

(1) As of September 22, 1996 were maintained by National Photographic Interpretations Center (NPIC) or

(2) Concern the activities of the Agency as of that date that were performed by NPIC. Questions on operational files created after 22 September 1996 should be directed to GC.

§ 293.5 Responsibilities.

(a) *Director of NIMA (D/NIMA).* (1) Designates the Agency initial denial authority (IDA) and appellate authority (AA).

(2) Appoints substitutes for the current IDA or AA if necessary.

(b) *The Chief of Staff (CS)* (or acting CS as designated by CS) serves as AA.

(c) *The Director of the Congressional Affairs Office (D/CA)* (or acting D/CA as designated by D/CA) serves as IDA.

(d) *Office of General Counsel (GC).* (1) Administers NIMA's FOIA program for processing FOIA requests received by NIMA.

(2) Processes all requests for mandatory declassification review in response to requests for declassification that meet the requirements of Executive Order 12958.

(3) Submits this part to the Department of Defense to publish in the Code of Federal Regulations and the FEDERAL REGISTER.

(e) *Office Directors in the functional Directorates and the Office Directors* who are aligned with D/NIMA (for example, Office of General Counsel, Office of Inspector General, Chief of Staff, International and Policy Office, or Mission Support Office) with regard to search for records.

(1) Appoint an Office point of contact (POC) to whom FOIA requests can be

directed from GC and who serves as a direct liaison with GC.

(2) Forward, through the POC, the FOIA request from GC to the organization most likely to hold or maintain the records being requested.

(3) Direct, through the POC, a search for the records be completed in a timely manner and respond directly to GC on the outcome of the search.

(f) *Office Directors in the functional Directorates and the Office Directors* who are aligned with D/NIMA (for example, Office of General Counsel, Office of Inspector General, Chief of Staff, International and Policy Office, or Mission Support Office) with regard to declassification review.

(1) Appoint an employee to act as the POC for the Office.

(2) Oversee and coordinate, through the POC, declassification reviews for FOIA.

(3) Make, through the POC, recommendations to the mandatory declassification officer (MDO) on the declassification of Agency records.

(g) *Chief, Mission Support Office, Security Programs Division, as MDO.* (1) Conducts declassification reviews for FOIA.

(2) Advises GC whether Agency records are properly classified in accordance with Executive Order 12958 and should be withheld from public release or disclosure.

§ 293.6 Procedures.

(a) *Administration of the FOIA program.* GC receives all FOIA requests submitted to NIMA, logs the requests into a database, and initiates the record search. If a final response cannot be made to the FOIA requester within the statutory time requirement of 20 working days, GC advises the requester of this fact and explains how the FOIA request will be processed within a multi-track processing system. As part of the administration FOIA process, GC:

(1) Assesses and collects fees for costs associated with processing FOIA requests, and approves or denies requests for fee waivers. Fees collected are forwarded through the Financial Management Directorate (CFO) to the U.S. Treasury.